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In the Supreme Court of the United States

OCTOBER TERM, 1983

WILLIAM FOREMAN, ET AL., PETITIONERS

v.

HOWARD V. COLLINS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether trial and entry of judgment in this case by a federal magistrate with the consent of the parties pursuant to 28 U.S.C. 636(c) was consistent with the requirements of Article III of the Constitution.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A26) is reported at 729 F.2d 108. The opinion of the district court (Pet. App. A28-A29) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 22, 1984. The petition for a writ of certiorari was filed on April 2, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Federal Magistrates Act in 1968,[1] recognizing "that a multitude of new statutes and regulations had created an avalanche of additional work for

[1]Federal Magistrates Act of 1968, Pub. L. No. 90-578, 82 Stat. 1107 (codified at 18 U.S.C. (1970 ed.) 3401-3402, 28 U.S.C. (1970 ed.) 631-639).

the district courts which could be performed only by multiplying the number of judges or giving judges additional assistance." *Mathews* v. *Weber*, 423 U.S. 261, 268 (1976). To meet that need, the Act created the office of United States Magistrate to replace the United States Commissioners, and invested magistrates with increased prestige and responsibilities, including "such * * * duties as are not inconsistent with the Constitution and laws of the United States." 28 U.S.C. 636(b)(3). Under the Act magistrates are appointed by the Article III district courts and can only be removed during their term of office for "incompetency, misconduct, neglect of duty, or physical or mental disability." 28 U.S.C. 631(i).

In 1976 and 1979 Congress amended the Act to delineate the authority of magistrates more fully.[2] The 1976 Amendments empowered magistrates to decide non-dispositive pretrial motions, subject to reconsideration by a district judge where the magistrate's order is clearly erroneous or contrary to law. 28 U.S.C. 636(b)(1)(A). They also authorized magistrates to hold evidentiary hearings and make findings and recommendations on dispositive pretrial motions, and on prisoner petitions contesting the conditions of confinement. 28 U.S.C. 636(b)(1)(B).[3] In addition, the 1976 Amendments encouraged the use of magistrates as masters pursuant to Fed. R. Civ. P. 53, particularly in cases where the parties consent. 28 U.S.C. 636(b)(2).

In the 1979 Act Congress further clarified the authority that magistrates could exercise. After carefully considering the constitutional implications[4] Congress enacted 28

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[2]Federal Magistrates Act Amendments of 1976, Pub. L. No. 94-577, § 1, 90 Stat. 2729 (amending 28 U.S.C. (1970 ed.) 636(b)); Federal Magistrates Act of 1979, Pub. L. No. 96-82, 93 Stat. 643.

[3]This Court in *United States* v. *Raddatz*, 447 U.S. 667 (1980), upheld the constitutionality of Section 636(b)(1)(B) evidentiary hearings.

[4]See pages 14-15, *infra*.

U.S.C. 636(c), which authorizes district court judges — with the consent of the parties — to refer civil cases to magistrates for trial and entry of judgment. The new section directs district courts to provide "procedures to protect the voluntariness of the parties' consent." 28 U.S.C. 636(c)(2). And even where the parties do consent, the district court must independently authorize the reference and, in a proper case, may vacate it. 28 U.S.C. 636(c)(6) (the court "may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection"). Upon entry of judgment an aggrieved party may appeal either directly to the court of appeals (28 U.S.C. 636(c)(3)) or, if the parties have agreed in advance, to the district court (28 U.S.C. 636(c)(4)).

Many litigants have chosen to avail themselves of the opportunity to proceed before a magistrate. In the year ending June 30, 1983, magistrates terminated 3,127 cases referred to them under Section 636(c). Although the majority were terminated before trial, magistrates presided over some 583 nonjury trials and 307 jury trials during that year.[5]

2. This controversy arose out of a civil rights action (42 U.S.C. 1983) filed by respondent Howard V. Collins. Collins alleged that petitioners, police officers, assaulted him while he was incarcerated at the Monroe County jail (Pet. App. A4). Pursuant to 28 U.S.C. 636(c), the parties consented before trial to proceed before a magistrate (Pet. App. A6), and agreed that any appeal would be taken to the district court as prescribed in 28 U.S.C. 636(c)(4) (Pet. App. A4).

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[5]Administrative Office of the United States Courts, *Annual Report of the Director*, Table M-5 (1983).

The jury awarded Collins $3,000 in compensatory damages and $60,000 in punitive damages (Pet. App. A4). The district court clerk entered judgment accordingly in December 1981 (Pet. 3). Petitioners appealed to the district court, which affirmed in an opinion filed in April 1983 (Pet. App. A4-A5). Petitioners then moved for leave to appeal to the court of appeals under 28 U.S.C. 636(c)(5) (Pet. App. A5). Their motion was denied in August 1983.

In the meantime, a panel of the Ninth Circuit had held that Section 636(c) was unconstitutional. *Pacemaker Diagnostic Clinic, Inc.* v. *Instromedix, Inc.*, 712 F.2d 1305 (1983). (That panel decision was, subsequently, overturned by the Ninth Circuit en banc, see 725 F.2d 537 (1984), petition for cert. pending, No. 83-1873 (filed May 16, 1984)). The Ninth Circuit panel, relying on its reading of *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982), held that even consensual reference of cases to magistrates for trial was inconsistent with Article III of the Constitution. On learning of that decision, petitioners moved in the district court to vacate that court's judgment. They reasoned that it was void, because the magistrate's judgment underlying it was unauthorized by Article III (Pet. App. A5). The district court denied the motion (*id.* at A27-A29).

Petitioners appealed the denial of their motion to the court of appeals (Pet. App. A5), and the United States intervened under 28 U.S.C. 2403 (Pet. App. A5).

2. The court of appeals affirmed (Pet. App. A1-A26). It held that the consensual reference of civil trials to magistrates is constitutionally permissible. It first concluded that, unlike the Bankruptcy Act procedures challenged in *Northern Pipeline*, Section 636(c) does not violate the principle of separation of powers (Pet. App. A13-A16). Because magistrates act as true adjuncts of the district courts, the

court reasoned that they are insulated from pressures exerted by the legislative and executive branches. Moreover, the requirement that the parties consent offers assurance against any undue delegation of judicial power to non-Article III officers (*id.* at A25). The court also held that any due process right the parties might have to a decision of their case by an Article III judicial officer was fully waivable, and that the parties had waived their right by consenting to the reference to a magistrate (*id.* at A25-A26).

ARGUMENT

Petitioners argue that magistrates do not enjoy the protections of tenure and compensation that the Constitution affords to Article III judges (Pet. 5-12) — a point we freely concede. They conclude from this that allowing magistrates to try cases and enter judgments under Section 636(c) ignores the principles enunciated by this Court in *Northern Pipeline Co.* v. *Marathon Pipe Line Co.*, which held that bankruptcy courts could not exercise jurisdiction over all civil proceedings arising in or related to Title 11 cases. Investing magistrates with similar authority, they assert, threatens judicial independence and "individualism" (Pet. 5, 6-9, 11-12; cf. 458 U.S. at 58 (opinion of Brennan, J.)). It also ignores "part of the framework of government" (Pet. 19) which forbids the determination of Article III matters by non-Article III judges. Cf. 458 U.S. at 58. These contentions are without merit.

1. We note at the outset that every court of appeals that has considered the issue has upheld the constitutionality of Section 636(c). In addition to the court of appeals here, the First,[6] Third,[7] and Ninth[8] Circuits have held that under that

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[6] *Goldstein* v. *Kelleher*, 728 F.2d 32 (1st Cir. 1984).

[7] *Wharton-Thomas* v. *United States*, 721 F.2d 922 (3d Cir. 1983).

[8] *Pacemaker Diagnostic Clinic, Inc.* v. *Instromedix, Inc.*, *supra*.

section the "essential attributes of judicial power" remain vested in the federal district courts. Because the parties must consent before any case is referred to a magistrate, and because a superintending Article III district judge retains ultimate control, these courts have unanimously agreed that Section 636(c) poses none of the problems found by this Court in *Northern Pipeline*.

This Court has also amended the Federal Rules of Civil Procedure to authorize magistrates to exercise the authority Congress gave them in Section 636(c). See Fed. R. Civ. P. 73(a) (amended May 3, 1983). As the actions of this Court and the courts of appeals suggest, the issue posed by petitioners presents no unsettled question of law deserving plenary consideration.

2. a. Petitioners' reliance on *Northern Pipeline* is misplaced. The Magistrates Act, unlike the 1978 Bankruptcy Reform Act, requires that the parties consent before a case can be referred to a magistrate. The plurality, concurring, and dissenting opinions in *Northern Pipeline* all took pains to distinguish the issue there from cases where non-Article III jurisdiction rests on consent. Justice Rehnquist's concurring opinion, stating the only holding that commanded a majority of the Court, said (458 U.S. at 91 (emphasis added)):

> I would, therefore, hold so much of the Bankruptcy Act of 1978 unconstitutional as enables a Bankruptcy Court to entertain and decide Northern's lawsuit *over Marathon's objection* to be violative of Art. III of the United States Constitution.[9]

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[9]Justice Rehnquist was joined by Justice O'Connor.

Justice Brennan's plurality opinion, joined by three other Members of the Court, distinguished the former bankruptcy system from the 1978 Act, observing that under the earlier scheme (458 U.S. at 79 n.31 (emphasis added)):

b. Petitioners find it significant that magistrates acting under Section 636(c) can direct the entry of a final judgment (Pet. 13), and that their findings of fact are not subject to de novo review by the district court (*id.* at 15, 17). But long before *Northern Pipeline* was decided this Court authorized similar procedures in cases involving non-Article III officials, provided the parties gave their consent. In *Heckers* v. *Fowler*, 69 U.S. (2 Wall.) 123 (1865), the Court approved an order issued by a trial court, with the parties' consent, that their dispute be determined in all respects by a referee. The order provided that the referee's decision was to have the same effect as a ruling of the court, and directed the clerk to enter judgment upon it. This Court held that since neither party had objected to the referee's report, the district court had no independent obligation to review it before the clerk entered judgment (*id.* at 133).

> [T]he referee had no jurisdiction, *except with consent*, over controversies beyond those involving property in the actual or constructive possession of the court.

The Chief Justice, dissenting, noted that the Court's holding did not apply to cases under statutes that permit the exercise of judicial authority only with the consent of the parties (458 U.S. at 92 (emphasis added)):

> [T]he Court's holding is limited to the proposition stated by Justice Rehnquist in his concurrence in the judgment — that a "traditional" state common-law action, not made subject to a federal rule of decision and related only peripherally to an adjudication of bankruptcy under federal law, must, *absent the consent of the litigants*, be heard by an "Article III court" if it is to be heard by any court or agency of the United States.

Justice White, dissenting, also suggested that a statutory plan requiring litigant consent would present a different constitutional issue (458 U.S. at 95 (emphasis added)):

> [If all of 28 U.S.C. 1471 were not invalidated,] cases such as [this one] would have to be heard by Art. III judges or by state courts — *unless the defendant consent[ed] to suit before the bankruptcy judge* — just as they were before the 1978 Act was adopted.

Kimberly v. *Arms*, 129 U.S. 512 (1889), upheld the parties' reference of their dispute to a special master, whose findings were to be reviewable only for manifest error. The Court explained (*id.* at 524):

> [W]hen the parties consent to the reference of a case to a master or other officer to hear and decide all the issues therein, and report his findings, both of fact and of law, and such reference is entered as a rule of the court, the master is clothed with very different powers from those which he exercises upon ordinary references, without such consent.

In fact, the magistrate's role under Section 636(c) is quite similar to the position served by a special master under Fed. R. Civ. P. 53. According to Rule 53(e)(4), the parties may stipulate that a master's findings of fact are final, and those findings automatically become the determination of the district court.[10] Of course all legal determinations may be reconsidered by the court (see Pet. 12-13), but the same is true under the Magistrates Act. See 28 U.S.C. 636(c)(3) (appeal to the court of appeals), 636(c)(4) (appeal to the district court).[11]

Courts have also exercised their Article III power by routinely approving dispute resolution through arbitration. District courts have asserted jurisdiction over a dispute,

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[10]Under Fed. R. Civ. P. 68 the parties themselves may consent to a judgment before trial; if they do, judgment is entered by the clerk without any independent review by an Article III court. The ministerial chore of entering judgment has never been thought to require the direct involvement of an Article III judicial officer. See Fed. R. Civ. P. 55(b)(1) (entry of default judgment).

[11]The Court observed in *Northern Pipeline* that providing for review by an Article III court would not, in itself, satisfy all Article III concerns. 458 U.S. at 86 n.39 (opinion of Brennan, J.); *id.* at 91 (opinion of Rehnquist, J.). The Court did not suggest, however, that the availability of review by an Article III judge was irrelevant to the constitutionality of a statute expanding the duties of non-Article III officials.

enforced an arbitration agreement, and then entered judgments based upon the arbitration awards without independently scrutinizing the merits of the award.[12] Section 9 of the Arbitration Act provides in such cases that "[i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration * * * any party to the arbitration may apply to the court so specified for an order confirming the award" (9 U.S.C. 9). The court must then enter an order enforcing the arbitration award unless there is a showing that it was obtained by fraud, that the proceedings were tainted by bias, or that the arbitrator exceeded his authority (9 U.S.C. 9-11).[13]

c. Insofar as Article III is designed for the protection of the parties, it is difficult to see why the parties may not knowingly consent to forego some of these protections, just as they may for their own reasons dispense with other

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[12]See, *e.g.*, *University Life Insurance Co.* v. *Unimarc, Ltd.*, 699 F.2d 846 (7th Cir. 1983); *T & R Enterprises, Inc.* v. *Continental Grain Co.*, 613 F.2d 1272, 1274-1277 (5th Cir. 1980). See also *York & C. R.R.* v. *Myers*, 59 U.S. (18 How.) 246 (1855).

[13]By contrast, this Court's decisions invalidating references to persons appointed by the court have all occurred in cases where the parties did not consent. *La Buy* v. *Howes Leather Co.*, 352 U.S. 249 (1957), struck down a reference to a special master over the objection of the parties. The Court held that in violating Fed. R. Civ. P. 53 the district court had abdicated its judicial responsibility to safeguard the parties' right to a trial before the court. 352 U.S. at 258.

Similarly, courts of appeals that have held references unlawful under the current Magistrates Act or earlier versions of it have relied primarily upon the absence of clear consent by both parties, or the absence of statutory authority prior to enactment of the current version of the Act. See, *e.g.*, *Glover* v. *Alabama Board of Corrections*, 660 F.2d 120 (5th Cir. 1981); *Coolidge* v. *Schooner California*, 637 F.2d 1321 (9th Cir.), cert. denied, 451 U.S. 1020 (1981); *Calderon* v. *Waco Lighthouse for the Blind*, 630 F.2d 352 (5th Cir. 1980); *Harding* v. *Kurco, Inc.*, 603 F.2d 813 (10th Cir. 1979).

constitutional safeguards directed to the fairness of the trial process. These include the right to a jury trial,[14] the right to counsel in a criminal case,[15] and the right to a speedy trial.[16]

Article III also serves an important role in the constitutional system of checks and balances. See *Northern Pipeline*, 458 U.S. at 58 (opinion of Brennan, J.). It is for that reason that parties cannot *confer* jurisdiction on a district court where it is not authorized by Congress or the Constitution. See *Mansfield, C. & L. M. Ry. Co.* v. *Swan*, 111 U.S. 379 (1884). But the parties may, without harm to the constitutional balance of power, agree to a decision of their case outside the federal court system altogether. And parties who begin an action in an Article III court may settle it on their own terms and call on the federal judiciary to enforce the terms of the settlement, provided they conform to the principles of law applied by the enforcing court. These instances simply illustrate the proposition that "the province and duty of the judicial department, to say what the law is" extends only "to particular cases," because at least one party must first seek a resolution of his dispute there. See *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Allowing a magistrate to act upon the consent of both parties merely recognizes this principle inherent in the nature of the judicial power.[17]

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[14] *Duncan* v. *Louisiana*, 391 U.S. 145, 159 (1968); *Patton* v. *United States*, 281 U.S. 276 (1930). Under the Federal Rules of Civil Procedure, a party automatically waives the right to a jury trial in a civil case unless he affirmatively exercises it. See Fed. R. Civ. P. 38(d).

[15] *Adams* v. *United States*, 317 U.S. 269 (1942); *Johnson* v. *Zerbst*, 304 U.S. 458, 464-465 (1938).

[16] *Barker* v. *Wingo*, 407 U.S. 514, 530 (1972).

[17] Petitioners suggest (Pet. 20-21) that consent may not have been truly voluntary in this case. This fact-bound claim was not advanced before the magistrate or in district court, and was rejected on the merits by the court of appeals (Pet. App. A5-A6). It does not warrant further consideration by this Court.

Moreover, even if the consent of the parties did not satisfy the structural objectives of Article III, Section 636(c) would present no constitutional difficulty. For as we have already noted (see page 3, *supra*), and as we explain more fully below, the district courts retain ultimate authority to decide whether any case shall be litigated before a magistrate.[18]

3. Even if Section 636(c) did not require the consent of the parties before a case could be referred to a magistrate, it would be significantly different from the section of the Bankruptcy Act before the Court in *Northern Pipeline*. A magistrate, unlike the bankruptcy court, may fairly be said to act as "an 'adjunct' to the district court," which itself "retain[s] 'the essential attributes of the judicial power.' " *Northern Pipeline*, 458 U.S. at 77 (opinion of Brennan, J.) (quoting *Crowell* v. *Benson*, 285 U.S. 22, 51 (1932)). In *United States* v. *Raddatz*, 447 U.S. 667 (1980), this Court noted the considerable decisionmaking authority that magistrates may exercise, but recognized that Article III district judges retain sufficient control to preserve the independence of the judiciary. As Justice Blackmun stated, "The only conceivable danger of a 'threat' to the 'independence' of the magistrate comes from within, rather than without the judicial department." 447 U.S. at 685 (Blackmun, J., concurring). See also *Northern Pipeline*, 458 U.S. at 79 n.30.

Unlike the situation in *Northern Pipeline*, Article III district judges (1) make the initial appointment of magistrates; (2) decide whether to permit any references whatever, or reference of any specific case, to a magistrate; (3)

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[18]Nothing in *Glidden Co.* v. *Zdanok*, 370 U.S. 530 (1962), relied upon by petitioners (Pet. 19-20), undermines what we have said above. *Glidden* held only that the Court of Claims and the Court of Customs and Patent Appeals were Article III courts, whose judges could properly be assigned to sit on cases in the federal district courts and courts of appeals. More important, the parties there had not consented to have their case heard before a judge who lacked Article III protection.

decide whether to exercise their contempt power to enforce the magistrate's judgments and orders; and (4) decide whether to vacate the reference of a case to a magistrate at any point.

28 U.S.C. 631(a), concerning the appointment of magistrates, provides that "[t]he judges of each United States district court * * * shall appoint United States magistrates in such numbers and to serve at such locations within the judicial district as the conference may determine under this chapter."[19] Once a magistrate is appointed, he may receive a case only upon the affirmative act of an Article III court. The Act provides that a magistrate "*may* conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case, *when specially designated to exercise such jurisdiction by the district court or courts he serves.*" 28 U.S.C. 636(c)(1) (emphasis added). The language leaves no doubt that a district court must determine for itself whether reference to a magistrate is appropriate.

Even then the district court retains authority to terminate the reference and conduct proceedings directly, even if the

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[19]Petitioners also argue (Pet. 8-9) that allowing the judges of the district court to appoint magistrates (see 28 U.S.C. 631(a)) removes the appointment power of the President and the confirmation power of the Senate defined by Article II, Section 2. But the Constitution explicitly authorizes the judiciary to appoint its own officers, if Congress so permits. Article II, Section 2 provides that "the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." See *Rice* v. *Ames*, 180 U.S. 371, 378 (1901). As the en banc Ninth Circuit noted, "This constitutional authority for the exercise of the appointment power by Article III judges implies an important dimension to the judicial power: the judiciary is permitted a degree of control and discretion for the design and shape of its own system. The Magistrates Act implements this constitutional authority." *Pacemaker*, 725 F.2d at 545.

parties themselves have consented.[20] The Act states (28 U.S.C. 636(c)(6)):

> The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.

The district court also enjoys the exclusive power to enter an order of contempt based on proceedings before the magistrate. 28 U.S.C. 636(e). See *United States* v. *Gedraitis*, 690 F.2d 351, 354 (3d Cir. 1982); *United States* v. *Ritte*, 558 F.2d 926, 927 (9th Cir. 1977).

Accordingly, the district court retains effective control throughout the proceedings. It is that right—the right to decide disputes,[21] not the mechanics of decision-making—that epitomizes the "essential attributes of judicial power" which Article III judges must retain.[22] Because it does not divest the district courts of that right, the Magistrates Act cannot represent an "encroachment or aggrandizement" by Congress at the expense of the judicial branch, or draw

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[20]The interim bankruptcy rule now governing bankruptcy proceedings similarly empowers a district court, on its own motion or at the request of a party, to withdraw a matter that has been referred automatically to the bankruptcy court under the interim rule. The Sixth Circuit relied on this component of the interim rule in upholding it against an Article III challenge. *White Motor Corp.* v. *Citibank, N.A.*, 704 F.2d 254, 263 (6th Cir. 1983). See also *In re Colorado Energy Supply, Inc.*, No. 83-1610 (10th Cir., Mar. 6, 1984); *In re Kaiser*, 722 F.2d 1574 (2d Cir. 1983); *Coastal Steel Corp.* v. *Tilghman Wheelabrator, Ltd.*, 709 F.2d 190 (3d Cir.), cert. denied, No. 83-409 (Oct. 31, 1983); *In re Hansen*, 702 F.2d 728 (8th Cir.), cert. denied, No. 82-1802 (June 27, 1983); *In re Braniff Airways, Inc.*, 700 F.2d 214 (5th Cir.), cert. denied, No. 82-1623 (May 23, 1983) (upholding constitutionality of interim bankruptcy rule).

[21]See *Muskrat* v. *United States*, 219 U.S. 346, 361 (1911).

[22]*Northern Pipeline*, 458 U.S. at 87.

into question the separation of powers concerns underlying the plurality opinion in *Northern Pipeline*.

4. Acts of Congress are of course entitled to a presumption of constitutionality. *Fullilove* v. *Klutznick*, 448 U.S. 448, 472-473 (1980); *Katzenbach* v. *McClung*, 379 U.S. 294, 303-304 (1964); *United States* v. *National Dairy Products Corp.*, 372 U.S. 29 (1963). This presumption is entitled to particular weight here, given the "frequently arcane distinctions and confusing precedents" which characterize the judiciary's own efforts to explicate the commands of Article III. See *Northern Pipeline*, 458 U.S. at 90 (Rehnquist, J., concurring).

In reporting the bill that became the 1979 Magistrates Act, the Senate Judiciary Committee concluded that the consensual nature of references under Section 636(c) eliminated any threat to the constitutionality of the reference procedure. S. Rep. 96-74, 96th Cong., 1st Sess. 4 (1979):

> The bill makes clear that the voluntary consent of the parties is required before any civil action may be referred to a magistrate. In light of this requirement of consent, no witness at the hearings on the bill found any constitutional question that could be raised against the provision. Near unanimity existed among the witnesses on the overall constitutionality of the bill.

The House committee report reached the same conclusion.[23] H.R. Rep. 96-287, 96th Cong., 1st Sess. 7-9 (1979) (footnotes omitted):

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[23]It is worth noting that the same House committee and subcommittee that concluded that Section 636(c) was constitutional had expressed substantial doubt about the constitutionality of the 1978 Bankruptcy Act, later held invalid in *Northern Pipeline*. See H.R. Rep. 95-595, 95th Cong., 1st Sess. 39 (1977); Staff of the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 95th Cong., 2d Sess. *Constitutional Bankruptcy Courts*, 33 (Comm. Print No. 3, 1977).

The committee inquired with great care into any possible constitutional objections to expansion of magistrate civil and criminal case-dispositive jurisdiction with the consent of the parties. It reviewed the printed records from the Senate and House hearings of the 89th, 90th, 94th and 95th Congresses during which this question was also examined. Likewise, the committee reviewed its own reports from the 90th and 94th Congresses.

In addition, during the 95th Congress the Senate carefully inquired into the issue during two days of hearings and found that the legislation passed constitutional muster * * * * *. Since no court has found the present statutory scheme to be constitutionally defective, and several have spoken approvingly, the committee is confident that the proposed legislation passes constitutional muster.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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